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13 BAKER CONCRETE CONSTRUCTION, INC.

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

17 JAMES HERNANDEZ

CASE NO.: 4:18-cv-03226-HSG

18 Plaintiff,

*Assigned to Hon. Judge Haywood S.  
Gilliam, Jr.*

19 v.

20 BAKER CONCRETE  
CONSTRUCTION, INC., a Ohio  
21 Corporation,

**INITIAL JOINT CASE  
MANAGEMENT STATEMENT,  
RULE 26(f) REPORT &  
[PROPOSED] ORDER**

22 Defendants.

Date: August 28, 2018  
Time: 2:00 p.m.

23

Complaint Filed: May 30, 2018

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1       The parties, James Hernandez (“Plaintiff”) and Baker Concrete Construction,  
 2 Inc. (“Defendant” or “Baker”), submit this Updated Joint Case Management  
 3 Statement pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure,  
 4 Local Rule 16-9(a), and the Standing Order for All Judges of the Northern District  
 5 of California.

6       (a)    **Jurisdiction and Service:** The parties assert jurisdiction is predicated  
 7 upon 28 U.S.C. sections, 1331, 1332, 1441 and 1446. The parties assert venue in the  
 8 U.S. District Court, Northern District of California under 28 U.S.C. sections  
 9 84(c)(2), 1391 (a), 1441(a). Baker Concrete Construction is a registered Ohio  
 10 Corporation doing some business in California, where Plaintiff was employed.  
 11 There are no issues regarding personal jurisdiction or venue, The parties do not  
 12 anticipate any venue change. All parties have been served.

13       (b)    **Facts:**

14       Plaintiff's Statement:

15       On April 11, 2016, Defendant Baker Concrete Construction (“Baker”) hired  
 16 Plaintiff James Hernandez as a Project Superintendent in its Phoenix, Arizona  
 17 facility. Mr. Hernandez successfully performed his job duties with Baker and  
 18 received frequent praise from his managers about his performance.

19       In January 2017, Baker hired Mr. Hernandez’s twenty-four year old  
 20 daughter, Caitlin Hernandez, as an intern. Shortly thereafter, Baker General  
 21 Superintendent Jay Allen began sexually harassing Ms. Hernandez. Ms.  
 22 Hernandez rejected Mr. Allen’s sexual advances and complained to Baker  
 23 management about the harassment. Baker took no action in response to her  
 24 complaints.

25       In July 2017, Baker transferred Mr. Hernandez to its Calistoga, California  
 26 facility to run the new Four Seasons project. Baker provided Mr. Hernandez with a  
 27 pay raise and bonus as part of the transfer. Mr. Allen continued to sexually harass  
 28 and discriminate against female workers in the Calistoga facility. So, on November  
 2

1 2, 2017, Mr. Hernandez complained to a human resources manager about Mr.  
 2 Allen's discriminatory and harassing conduct.

3 On November 6, 2017, which was the next business day that Mr. Hernandez  
 4 worked, Mr. Allen terminated Mr. Hernandez's employment. Mr. Allen refused to  
 5 give him a reason for the termination. At that time, Mr. Hernandez had never  
 6 received a negative performance review or written criticism of his performance.  
 7 Shortly after Mr. Hernandez obtained a new job on the same jobsite, Baker  
 8 contacted Hernandez's new employer and requested that they terminate his  
 9 employment. A short time later, Baker called Mr. Hernandez's new employer and  
 10 again requested that they fire Mr. Hernandez.

11 Defendant's Statement:

12 Defendant has not completed a factual investigation into all of the events and  
 13 allegations in the Complaint. Although Defendant makes a good faith effort herein  
 14 to supply the factual information currently known to it, Defendant reserves the right  
 15 to amend, modify or supplement their factual statement in this case and to assert  
 16 additional facts in connection with the defense of this matter.

17 Defendant Baker Concrete Construction, Inc. denies all allegations and causes  
 18 of action in Plaintiff's Complaint. Defendant strictly and proactively forbids all  
 19 forms of discrimination and harassment including sex and gender discrimination and  
 20 harassment, against any person for any reason, including in terms of conditions,  
 21 and/or privileges of employment. Defendant contends that on April 11, 2016 Baker  
 22 Concrete Construction hired James Hernandez as a Superintendent in its Phoenix,  
 23 Arizona facility. In January 2017, Baker Concrete Construction hired Mr.  
 24 Hernandez's daughter as an intern. Baker Concrete Construction transferred Mr.  
 25 Hernandez to Calistoga, CA to work on a new jobsite, where he worked with Mr.  
 26 Allen. On November 6, 2017, Mr. Hernandez was told he was terminated; which  
 27 was based on valid, lawful, and non-discriminatory reasons. Plaintiff filed his  
 28 Complaint in the United States District Court in the Northern District of California

1 on May 30, 2018. Defendant does not believe any issues can be narrowed to  
2 expedite this process at this time.

3       (c) **Legal issues:**

4       The instant list is not exhaustive as discovery has not yet commenced. At the  
5 current juncture however, the parties anticipate the following legal issues:

- 6       1. Whether the Plaintiff can prove a prima facie case of retaliation;
- 7       2. Whether Plaintiff can prove that the reasons for his termination were  
8              merely a pretext for retaliation;
- 9       3. Whether Plaintiff can prove that he engaged in a protected activity and  
10             whether there is a causal nexus between that protected activity and his  
11             termination;
- 12       4. Whether the Plaintiff can prove a prima facie case of failure to prevent  
13             discrimination and harassment in violation of FEHA;
- 14       5. Whether Plaintiff can prove a prima facie case of intentional interference  
15             with a prospective business advantage;
- 16       6. Whether Plaintiff can prove a prima facie case of negligent interference  
17             with a prospective business advantage.

18       (d) **Motions:**

19       Defendant contends there are no prior or pending motions at this time.  
20       Defendant anticipates filing a motion for summary judgment and/or summary  
21       adjudication as well as any discovery motion that may become necessary during the  
22       discovery phase of this litigation.

23       (e) **Amendment of Pleadings:**

24       Defendant does not anticipate any amendments, but reserves the right to  
25       amend its responsive pleading in response to any amended pleadings by Plaintiff.

26       (f) **Evidence Preservation:**

27       The parties have reviewed the Guidelines Relating to the Discovery of  
28       **Electronically Stored Information ("ESI Guidelines")**, and confirms the parties

1 have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable  
2 and proportionate steps needed to preserve evidence relevant to the issues  
3 reasonably evident in this action.

4       (g) **Disclosures:**

5       The parties initial their Rule 26(f) conference on August 7, 2018. The parties  
6 have agreed to exchange Initial Disclosures on August 21, 2018.

7       (h) **Discovery:**

8              Plaintiff's Position:

9       Plaintiff has propounded document demands and interrogatories and intends  
10 on serving additional discovery, including requests for admission, interrogatories,  
11 and document production requests. Plaintiffs intends on deposing Jay Allen, Brian  
12 Butts, and other managers, as well as other current and former employees of Baker,  
13 persons most knowledgeable, and well as third party witnesses. Plaintiff believes a  
14 discovery cut-off date is premature at this time.

15              Defendant's Position:

16       Defendant contends that a discovery cut-off date is premature until such time  
17 as a trial date is set. Defendant plans to propound written discovery and take  
18 Plaintiff's deposition for the purpose of filing a dispositive motion. Given the  
19 number of claims and fact-intensive nature of the allegations asserted, Defendant  
20 anticipates needing two days (14 hours total) to properly examine Plaintiff.

21       (i) **Class Action:**

22       Not Applicable.

23       (j) **Related Cases:**

24       None.

25       (k) **Relief:**

26              Plaintiff's Position:

27       Plaintiff seeks compensatory damages, general damages, punitive damages,  
28 attorney fees and costs, as well as injunctive relief.  
5

1           Defendant's Position:

2           Defendant denies that Plaintiff is entitled to any damages.

3           **(l)    Settlement and ADR:**

4           The parties have agreed to early private mediation. Setting a deadline with  
5 respect to mediation will assist the parties in moving this matter toward resolution.  
6 The parties respectfully submit that any mediation should be completed within 120  
7 days from the August 28, 2018 Case Management Conference.

8           **(m)    Consent to Magistrate Judge for All Purposes:**

9           The parties have not consented to Magistrate Judge jurisdiction for all  
10 purposes.

11          **(n)    Other References:**

12          The parties do not believe this case is suitable for other references.

13          **(o)    Narrowing of Issues:**

14          The parties have not stipulated to the narrowing of any issues. This may  
15 be possible after the parties have had an opportunity to conduct further discovery.

16          **(p)    Expedited Trial Procedure:**

17          The parties do not believe that an expedited schedule is appropriate in this  
18 case.

19          **(q)    Scheduling**

20          Given the parties' intent to participate in early private mediation, they  
21 respectfully submit that it is premature to set deadlines at this stage. Rather, the  
22 parties ask that the Court set a deadline for the early mediation to be completed  
23 along with a date for a subsequent Case Management Conference to be set shortly  
24 after mediation to report on the mediation's outcome.

25          **(r)    Trial**

26          The Parties agree that trial scheduling should be postponed for now. *See*  
27 *Section Q, supra.*

**(s) Disclosure of Non-Party Interested Entities of Persons**

The parties will file the Certification of Interested Entities or Persons as required by Civil Local Rule 3-16.

**(t) Professional Conduct**

The parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**(u) Other issues:**

At this time, the parties do not anticipate any other issues.

Pursuant to Local Rule 5-1, the filer of this document attests that concurrence in the filing of the same has been obtained from each of the other signatories.

Dated: August 21, 2018

## GORDON REES SCULLY MANSUKHANI

By:

Roger M. Mansukhani  
Craig D. Nickerson  
Marshall R. Lurtz  
Attorneys for Defendant  
Baker Concrete Construction, Inc.

Dated: August 21, 2018

McCormack and Erlich, LLP

B

Bryan J. McCormack  
Attorneys for Plaintiff  
James Hernandez

1                   CASE MANAGEMENT ORDER

2                   The above INITIAL JOINT CASE MANAGEMENT STATEMENT, RULE  
3                   28(f) REPORT & PROPOSED ORDER is approved as the Case Management Order  
4                   for this case and all parties shall comply with its provisions.

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7                   IT IS SO ORDERED.  
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10                  Dated: \_\_\_\_\_

11                  Hon. Judge Haywood S Gilliam, Jr  
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